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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~1048~~ 158

KING COLONY RANCH, an association, and KING COLONY RANCH, a corporation,

Petitioners,

vs.

THE STATE OF MONTANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

RALPH J. ANDERSON,
517 Power Block—P. O. Box 252
Helena, Montana
Attorney for Petitioner.

STANLEY P. SORENSON,
517 Power Block—P. O. Box 252
Helena, Montana

HOWARD C. GEE,
Montana Building
Lewistown, Montana
Of Counsel

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vs.

THE STATE OF MONTANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

To the Honorable Chief Justices and to the Associate Justices of the Supreme Court of the United States:

Petitioners, King Colony Ranch, an association, and King Colony Ranch, a corporation, respectfully pray that a Writ of Certiorari issue to review the decision of the Supreme Court of the State of Montana entered in the above Cause on March 17, 1960, modifying and affirming as modified a decision and judgment of the District Court of the Tenth Judicial District of the State of Montana, in and for the County of Fergus, which said judgment decided that the corporation license tax of the State of Mon-

tana was and is applicable to the petitioners and which gave judgment for the State of Montana in the sum of $7,874.34 for taxes and $787.44 penalty for the years commencing with 1935 and ending with 1948.

OPINIONS BELOW

The District Court of the State of Montana prepared no separate opinion. Its Findings of Fact, Conclusions of Law and Judgment dated and entered respectively the 10th and the 22nd day of December, 1958, appear at pages 79 and 87 of the record and are appended hereto as Appendix I-XII. The decision of the Supreme Court of Montana and its opinion are appended hereto as Appendix XIII-XXIII. Such decision and opinion is not yet officially reported but appears in Volume 350, Pac. 2d., Advance Sheet No. 5, p. 841.

JURISDICTION

The opinion of the Supreme Court of Montana was rendered March 17, 1960 (Appendix XIII), the petition for rehearing, timely filed, was denied April 18, 1960 (Appendix XXV).

Jurisdiction of this Court is invoked under 28 U.S.C., Section 1257, subdivision 3.

QUESTIONS PRESENTED

Does the application of the Montana Corporation License Tax Act (Appendix XXVI-XXVIV) to the petitioner

violate the First Amendment to the Constitution of the United States made applicable to the states by he Fourteenth Amendment to the Constitution of the United States?

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The Montana Corporation License Tax Act, Chapter 15 of Title 84, R.C.M. 1947, insofar as pertinent to this petition, Section 84-1501 R.C.M. 1947, is set forth as Appendix XXVI-XXV hereto. It appears at pages 555, 556 and 557 of Volume 5 of the Revised Codes of Montana of 1947.

The constitutional provisions involved are the First Amendment to the Constitution of the United States which reads as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

and the Fourteenth Amendment, particularly that portion thereof reading as follows:

> "1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

The petitioners, King Colony Ranch, an association, and King Colony Ranch, a corporation, are one and the same. The King Colony Ranch was established in 1935 with the purchase by the Hutterian Brethren of Lake Byron, Huron, South Dakota, of the ranch property located in Fergus County, Montana. (R. 91).

Until the year 1947 (R. 91), the petitioners operated as an association. (R. 93). In the year 1947 the corporation was formed. (R. 96).

The Hutterian Brethren are a religious sect whose beliefs do not encompass the institution of private property. The Hutterites, as they are commonly known, are divided into organized colonies under the overall church. The members of each colony live together. No member of the colony may own any property and no member of the colony has any special interest in any property owned by the colony as a whole. All members of the colony are sustained and taken care of by the colony as a whole. The goods and possessions of the colony belong to the colony and not an any individual member, all of this being based upon the Hutterian understanding of the Bible. (R. 116-119).

It is sometimes difficult to understand the teachings and tenets of a religion unfamiliar to us but we believe that the following testimony of Elder Wurz, Senior Elder of the Hutterian Brethren of Canada, England and the United States, should be of help to this Court. His testimony appears at R. 121-122. It reads as follows:

"Q. Now you spoke about cooperatives, just what do you mean by, for instance, the King Colony Ranch being a cooperative?

A. The cooperative of a colony, a church, is based first of all, spiritually, and in this cooperative is like our body, my fingers, my hands, my eyes, and everything, all the energy and all my power and strength must work for my body, or it can't exist.

Q. Maybe you mean like the State of Montana is one of the United States?

A. Yes.

Q. And the United States is over all of them, and is that true of the colonies, also, the church is over all the colonies

A. Yes.

Q. If I understand you correctly, the colony takes care of its own business such as the farming and ranching business, does it not?

A. Yes.

Q. And the individual members don't own any part of that property.

A. Right.

Q. And they have no income?

A. No.

Q. —excepting just their livelihood and things of that kind?

A. None at all.

Q. They work together for the benefit of the colony?

A. And support it out of that.

Q. As you mentioned a little while ago, if there are people who are crippled, destitute, widows, and so on, the colony itself takes care of them?

A. The Church.

Q. You mean the overall church?

A. The overall church when it is necessary. When a single church like the King Colony Ranch have a hail storm, things of that kind, through me, I mention to the rest of the church, they donate the necessary things those people need to be supported and kept.

Q. That's from the church, as a body?

A. Yes.

Q. For instance, the King Colony Ranch operates a business of ranching and farming, and when there is a net income, what happens to that net income after operating expenses and living and everything has been taken out?

A. Naturally, as everybody does, especially this church because this church have under obligations in their covenants they promise to the church and to

Jesus—Jesus is the body, the father, that we are all linked to this body, we must uphold this body, and the church who pretends to be a part of Jesus must uphold that body with the surplus.

Q. Do you mean by that, if the King Colony Ranch has any money left over after paying all of the living expenses for the members of the colony, and the operating expenses, that they send that money to Canada?

A. They do not send it at once, but when they have a chain, I am one of it, when those that are in need or have bad luck are seeking me, say here that colony is part of the cooperative is lacking, we have got to do something, then we get the heads of our colonies together and consider that case and decide how much we must, from all of the colonies contribute. . . ." (R. 120-122).

While no member of a colony or of the church may, under the beliefs of the Hutterians, have any individual interest in any of the property owned by the members of the church or colony as a whole, it is obvious that there must necessarily be some dealings with the outside world, that there must be some repository for the title to the property owned in common by the members of the church and there must be some vehicle through which their contacts with the outside world, necessary to their support and maintenance may be had. The only such organization compatible with the religious beliefs of the Hutterians which is provided by the law is the corporation or association form, hence the adoption by the various colonies of one

or the other of those organizations through which to do business with the outside world.

The petitioners, believing themselves exempt from the corporation license tax of the State of Montana, did not make any returns to the State and the respondent here in 1952 brought action against the petitioners seeking recovery of corporation license taxes from the petitioners commencing with the year 1935 and ending with the year 1948, together with penalty and interest for the said years. (R. 1-56).

As an affirmative defense to the action the defendant, the petitioner here, in its answer alleged that it is a religious corporation and as such, not subject to corporate license tax and that under the Constitution of the United States and of the State of Montana, particularly Sub-section 1 of the Fourteenth Amendment to the Constitution of the United States, and the First Amendment to the Constitution of the United States, the defendant, petitioner here, was not subject to the corporation license tax (R 74-76), thus raising the Constitutional question in the first instance.

The District Court by its Conclusion of Law No. 1 (R 83) determined the constitutional question contrary to the assertions of the petitioners and the question was again raised in the Supreme Court of the State of Montana by the appellant's Specification of Error No. 3, which reads as follows:

"3. The court erred in making its Conclusion of Law No. 1 as follows, to-wit:

"That the imposition of a corporation license tax against the defendants in this action under the laws of the State of Montana, does not violate any of the provisions of the Constitution of the United States of America, or of the Constitution of the State of Montana." (Tr. 83).

the said Conclusion of Law being contrary to the evidence and against the law."

a true and correct copy of which said Specification of Error has been certified to this Court.

The Supreme Court of the State of Montana passed upon that question as follows:

"A non-discriminatory license tax on these activities does not interfere with religious freedom or the free exercise of religion. The court did not err in holding that the license tax was and is valid so far as the religious aspect of the case is concerned." (Appendix XVII-XVIII).

The decision was written by Mr. Justice Angstman, concurred in by Mr. Chief Justice Harrison and Mr. Justice Castles, with a dissent by Mr. Justice Bottomly, concurred in by Mr. Justice Adair.

REASONS FOR GRANTING THE WRIT

1. The tax involved is a license fee for carrying on business in the corporate capacity in the State of Montana.

The tax which has been imposed pursuant to the decision of the Supreme Court of the State of Montana upon

this petitioner, association and corporation, is clearly a license tax: Section 84-1501 R.C.M. 1917 (Appendix XXVI-XXVIV) provides for the exacting of the tax and it is there described as a "license fee" for carrying on business in the State of Montana. It includes within its impact corporations, associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to the State laws, agreements or declarations of trust. This particular tax was discussed and considered by the Supreme Court of Montana in *Equitable Life Assurance Co. et al vs. Hart, et al.* 55 *Mont.* 76, 83, 173 *Pac.* 1062. The Montana court there pointed out that the legislative assembly of 1917 found itself confronted with the necessity for expenditure which could not be met by taxation in the method prescribed by the Constitution of Montana and the statutes relating to taxation of property under the taxing power of the state. The legislature appointed a joint committee composed of three from the Senate and five from the House to devise ways and means for meeting the emergency. The attorneys hired to advise the committee recommended the adoption of the principle of a license or excise tax as outlined by this Honorable Court in *Flint vs. Stone Tracy Co.*, 220 U.S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann Cases, 1912B 1312. That case involved a discussion of the corporation franchise taxes and the Federal Tariff Act of 1909. The committee accepted the recommendations and the Act of 1917 (See

tion 84-1501 et seq., R.C.M.). (Appendix XXVI-XXVIV)] was drafted from the Tariff Act of 1909.

The opponents of the Tariff Act of 1909, in the case of *Flint vs. Stone Tracy Co., supra, 220 U.S. 107* argued at length that the tax there involved was a property tax upon the franchise of the corporation or an income tax. See particularly the arguments reproduced at pages 393-396 of 55 L. Ed.

This Honorable Court determined the nature of the tax in the following language:

> "* * * *The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity*, i.e., with the advantages which arise from corporate or quasi corporate organization * * *." (220 U.S. 151). (Emphasis supplied).

That language was quoted and applied by the Supreme Court of Montana in *Equitable Life Assurance Co. et al. vs. Hart, et al., supra*, 55 Mont. 76, 83, as applicable to the Montana Act.

There was some discussion in the court below as to whether or not the tax was upon the privilege of incorporating or upon the privilege of doing business in the corporate capacity. In this respect we see no distinction, the impact of the tax is the same. Even were the petitioners and all of the Hutterians to arrange their business in such fashion that there would be no net income,

which is the measure of the tax, after the payment of all of the expenses, nonetheless there would be a minimum tax (Appendix XXVI) which fact further emphasizes and illustrates that the tax involved is a privilege tax or license tax.

2. Application of the corporate license tax of Montana to the petitioner results in a clear violation of the First and Fourteenth Amendments to the Constitution of the United States.

This Honorable Court has decided quite a number of cases involving the sect known as Jehovah's Witnesses. It is upon these cases that we base our principal reliance. The case of *Murdock vs. Pennsylvania*, 319 U.S. 805, 87 L. Ed. 1292, 63 Sup. Ct. 870, 146 A.L.R. 81 involved an ordinance of the City of Jeannette, imposing a license tax for the privilege of canvassing or soliciting within a municipality. This Honorable Court in that case held that when applied to religious colporteurs engaged in the dissemination of their religion through the sale of books and pamphlets by solicitation from house to house, the ordinance was an invasion of the right of freedom of religion. The petitioners in the case were Jehovah's Witnesses who solicited sales from door to door of religious books and pamphlets. It appeared that the petitioners acquired the books and pamphlets at a price less than that for which they were sold. Those devoting full time to the work acquired the books at a lesser price than those devoting

part time to the work. This Honorable Court ruled that the state could not impose a charge for the enjoyment of a right granted by the Federal Constitution and that the license tax there under consideration invaded the rights guaranteed by the First Amendment applied to the states by the Fourteenth Amendment.

It was argued below, as it will be argued here, that since the petitioner and its members, for whatever reason, have formed themselves into an organization which is taxed by the state and since the tax is applied to all such organizations and is non-discriminatory between them, petitioner must pay the tax even though the organization as a corporation is a necessary element in the practice of the religion of its members. With respect to this type of argument this Honorable Court in the Murdock case held that the fact that the ordinance was non-discriminatory was immaterial, that equality in treatment did not save the ordinance and that freedom of the press, freedom of speech and freedom of religion are in a preferred position.

The Supreme Court of Montana held in effect that the activities of the petitioners were purely commercial and thus subject to tax. Here the court lost sight of the fact that the tax involved is one the application of which to these Hutterian Brethren is the direct result of the practice of their religion. Following the Murdock decision, this Honorable Court had occasion to review the South Carolina decision in *McCormick vs. Follett*, 204 S.C. 337, 29 S.E. 2d 539, sustaining the conviction of a Jehovah's

Witness who was convicted of violating a municipal ordinance prescribing an occupational license tax for agents selling books. In that case it appeared that the petitioner earned his entire living by distributing religious books in the town of his residence. The South Carolina court considered this Honorable Court's opinion in the Murdock case at some length and decided that the activities of the petitioner there were commercial rather than religious. This Honorable Court in *Follett vs. McCormick, 321 U.S. 573, 64 S. Ct. 717, 88 L. Ed. 938, 152 A.L.R. 317*, reversed the holding of the South Carolina Supreme Court and held in effect that even though the petitioner there derived his entire income and livelihood from the activity which the petitioner considered required of him by his understanding of the Bible that nonetheless, the state could not constitutionally impose upon him a licensing requirement.

Thus, this Honorable Court has uniformly held that a license tax or privilege tax applied to that which is an element of religious belief is unconstitutional.

The Supreme Court of the State of South Dakota has followed the decisions of this Honorable Court in a case (*State vs. VanDallan, 69 S.D. 466, 11 N.W. 2d 523* involving the South Dakota Retail Sales Tax which was held by that court to be a privilege tax, as is the tax here involved, and which, like the tax here involved, was a percentage tax.

All of the foregoing cases demonstrate that where a

privilege, occupation or license tax is attempted to be applied to a situation such as this where the occasion for the application of the tax is the result of the religious belief and religious practices of those upon whom the tax falls the imposition of the tax is forbidden by the highest law of the land.

In connection with this proposition that the corporate form or association form is an integral and requisite part of the religious belief and practices of the members of the petitioner corporation and association, we direct this Honorable Court's attention to its decision in *U.S. vs. Ballard, 322 U.S. 78, 64 Sup. Ct. 882 88 L. Ed., 1149* wherein this Honorable Court held that the First Amendment does not select any one group or any one type of religion for preferred treatment. It should be obvious that the application of the corporation license tax here, when the corporation or association form is an integral and necessary part of the religion of the members constitutes a discrimination between the religious beliefs of the petitioner and those of other parties whose beliefs do not require the same way of life.

3. The question sought to be raised can be raised by the petitioner.

It has been argued, and may be argued again, that it is impossible for the corporation license tax to infringe upon the First Amendment by reason of the fact that the liberty guaranteed by the Fourteenth Amendment is the

liberty of natural not artificial persons and that therefore infringement of the First Amendment in this respect cannot be raised by a corporation. We readily concede that the courts generally have held that a corporation is not a "citizen" within the privileges and immunities clause of the Fourteenth Amendment but the courts have just as uniformly held that a corporation is a "person" within the meaning of the Fourteenth Amendment and particularly the due process clause and equal protection clause. Thus it becomes clear that in order to determine whether the First Amendment is violated as to this corporation, we must determine whether the right sought to be protected is a right purely of natural citizens or whether such right is a right protected by the provision that the state shall not deprive any person of life, liberty or property without due process of law nor deny to any person equal protection of the laws.

The foremost of the liberties protected by the Constitution are freedom of religion, freedom of speech and freedom of press. See *Murdock vs. Pennsylvania, supra,* 319 U.S. 105, wherein this Honorable Court stated that freedom of religion, freedom of press and freedom of speech are in a preferred position.

Our research indicates that there has been no case decided by this Honorable Court involving a corporation raising this particular constitutional objection. However, the case of *Grosjean vs. American Press Co.,* 297 U.S. 233, 56 Sup. Ct. 444, 80 L. Ed. 660 is pertinent. That case in-

volved freedom of speech and of the press and this Honorable Court held that it was by virtue of the due process clause of the Fourteenth Amendment that the states were precluded from abridging freedom of speech or of the press and further held that a corporation, while not a citizen within the meaning of the privileges and immunities clause, was nonetheless a person within the meaning of equal protection and due process of law clauses. Compare then the provision of the First Amendment as to religion, to that of freedom of speech and the press. We find that in both instances the amendment is a direct injunction against the making of any law infringing upon these freedoms. Thus, if freedom of the press and freedom of speech are to be included within the due process and equal protection clauses it would seem likewise that freedom of religion should also be included therein.

While we have found no cases decided by this Honorable Court which decide or even consider the point, there are many cases wherein a corporation has raised this question and its right to do so has not been questioned. See, for instance, *Watch Tower Bible & Tract Society et al vs. City of Bristol*, 24 Fed. Supp. 57, 305 U.S. 572, 59 Sup. Ct. 246 83 L. Ed. 361; *Watch Tower Bible & Tract Society vs. Los Angeles County et al.* 30 Cal. 2d 426, 183 Pac. 2d 178, petition for certiorari denied 332 U.S. 811, 68 Sup. Ct. 112, 92 L. Ed. 389; *Watch Tower & Bible Tract Society vs. Metropolitan Life Ins. Co.*, 188 Misc. 978, 69 N.Y. Supp. 2d 585, 272 Appellate Division 1039, 75 N.Y.

Supp. 2d 81, 297 N.Y. 339, 79 N.E. 2d 433, 3 A.L.R. 2d 1425, petition for certiorari denied *335 U.S. 886, 69 Sup. Ct. 232, 93 L. Ed. 425*, rehearing denied *335 U.S. 912, 69 Sup. Ct. 479, 93 L. Ed. 445; Kotohira Jinsha v. McGrath, 90 Fed. Supp. 892, 897.*

The Watch Tower Bible & Tract Society cases were decided against the Society upon other grounds, but it is persuasive that in none of them was this question raised. The *Kotohira case, supra, 90 Fed. Supp. 892 was one* wherein the plaintiff was a Hawaiian corporation and it constitutes a direct holding that a corporation could raise the question of infringement of its religious freedom protected by the First Amendment. Furthermore, this Honorable Court has treated the religious freedom granted by the First Amendment as coming within the due process clause of the Fourteenth Amendment which, as we have seen, is applicable to corporations as persons thereunder. See *Minersville School District v. Gobitis, 310 U.S. 586, 60 Sup. Ct. 1010, 84 L. Ed. 1375, 127 A.L.R. 1493; Board of Education v. Barnett, 319 U.S. 624, 63 Sup. Ct. 1178, 87 L. Ed. 1628.*

CONCLUSION

The petitioner, or more accurately its members, believing as they do, that all property should be owned in common and all persons provided for equally out of the common fund must, in order to practice their religion, assume some form for their dealings with the outside world.

The only form supplied by the law is the association or corporate form, consequently the assumption of that form is necessary to the practice of the religion espoused by petitioner's members and no tax may be applied by reason of the assumption of that form.

We have conceded, and we concede, that if this were an income tax such as was involved in the cases of *Hutterische Bruder Gemünde*, 1 B.T.A. 1208, *and Hofer vs. U.S.*, 64 *Court of Claims* 672, rather than a privilege or license tax, petitioners could not complain. If this be incongruous, that fact provides no argument and is basis for an appeal to the legislature.

We do not contend that the petitioner and its members have no obligation with respect to the support of the Government but, as demonstrated by this Honorable Court's decisions, the state may not constitutionally impose upon them the requirement that they pay a license fee for the privilege of living and worshipping according to the dictates of their conscience and their understanding of the Bible.

The machinery exists whereby an equitable tax may be levied upon petitioner and its members based upon the income received by the petitioner. Such machinery has been adopted by the Federal Government. (See Section 501 of the Internal Revenue Code of 1954). If such machinery for the support of the Government by petitioner were set up, petitioner could have no complaint but to

levy a tax upon the privilege of doing business in the corporate form as to the petitioner tantamount to the imposition of a fee upon the religious beliefs of its members.

The decision here sought to be reviewed has a direct impact upon thirteen colonies of the Hutterian Brethren located in the State of Montana. It is seriously advanced and deserves the full consideration which it will receive from this Honorable Court upon the issuance of a Writ of Certiorari, freedom of religion, as frequently observed by this Honorable Court, occupying a favored position.

Respectfully submitted,

RALPH J. ANDERSON,
Attorney for Petitioner.

STANLEY P. SORENSON,

HOWARD C. GEE,
Of Counsel

APPENDIX

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FERGUS

THE STATE OF MONTANA,

Plaintiff,

vs.

KING COLONY RANCH, an association; and KING COLONY RANCH, a corporation,

Defendants,

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above entitled action came on regularly for hearing before the Court, sitting without a jury, on the 8th day of October, 1957, pursuant to an order of the Court; H. O. Vralstad, Esq., of Helena, Montana, Special Assistant Attorney General of Montana, representing the Attorney General of Montana, appearing for the plaintiff, and Howard C. Gee, Esq., Attorney at Law, Lewistown, Montana, appearing for the defendant; and both parties having declared themselves ready for trial, witnesses were duly sworn and oral and documentary proof was offered and introduced; and time having been given the respective parties within which to file proposed findings of fact, conclusions of law and briefs, and time therefor having

expired, and the Court having fully considered the same as filed, and the evidence and the law herein, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I.

That the plaintiff has fully sustained the material allegations of its complaint and of each separate cause of action therein, by a preponderance of the evidence, to the entire satisfaction of the Court, and is entitled to the relief hereinafter set forth.

II.

In 1934, a group of people from South Dakota, of the Hutterian faith, consisting of 80 or 85 men, women and children, of which number 40 or 45 were adult males, came to Fergus County, Montana, and located and established themselves on a ranch in said county, known as the King Ranch, where the colony has existed ever since.

III.

Late in the year 1934, said colony had acquired by purchase said King Ranch for approximately $80,000.00, whereon they constructed two houses.

IV.

That all the members thereof reside in a colony upon said King Ranch, in accordance with their religious views.

V.

That said members organized themselves by electing from among their own members a president, secretary,

and trustees, and named their colony, the "King Ranch Colony."

VI.

That said colony engaged in and carried on the business of general farming and ranching in Fergus County, Montana, in each of the years 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, and until on or about January 20, 1947, on which date it incorporated under the laws of the State of Montana under the name, "King Colony Ranch," after which date, said colony carried on said business in its corporate name during the calendar years 1947 and 1948.

VII.

That said colony, both as an association and as a corporation, failed, neglected and refused to file a corporation license tax return for any of said years, with the State Board of Equalization of the State of Montana.

VIII.

That said colony, both as an association and as a corporation kept books and records for each of said years showing its respective income and disbursements from said business.

IX.

That all property, real and personal, of said colony, both as as association and as a corporation, was owned exclusively by said colony as distinguished from its members; and that no member of the colony as an association or as a corporation, owned or possessed any right,

title or interest in or to any of such property, or in or to the income of either, and claims none.

X.

That no member of the King Colony Ranch, as an association, or of the King Colony Ranch, as a corporation, claimed or received any salary or wages from either during any of said years for his services to the association or to said corporation; that said members have, and had, no income and owned no property and have no estate to transfer to their heirs; that the King Colony Ranch, as an association, and the King Colony Ranch, as a corporation, provided living quarters, food clothing, medical and hospital care for all members of the colony when necessary, and school for the children, and took care of its old and infirm members without public expense.

XI.

That on or about September 22, 1949, in obedience to a subpoena duces tecum of said State Board of Equalization, the books and records of said King Colony Ranch, an association, and of King Colony Ranch, a corporation, were submitted to said board for its inspection, covering all of said years.

XII.

That thereafter, on or about the 8th day of October, 1949, said Board determined from said books and records and information in its possession, that a corporation license tax was due the State of Montana from said King Colony Ranch, an association, and from said King Colony Ranch,

a corporation, and thereupon the Board filed returns, and made the following assessments, which are correct, to-wit:

Year	Net Income	Tax	Penalty
1935	$ (Loss)	$ 5.00	$ .50
1936	2,827.32	84.82	8.48
1937	149.27	5.00	.50
1938	4,312.19	129.37	12.94
1939	4,984.26	149.53	14.95
1940	7,679.12	230.37	23.04
1941	16,319.57	489.59	48.96
1942	36,555.12	1,096.65	109.66
1943	14,803.64	444.11	44.41
1944	38,115.14	1,143.45	114.35
1945	27,250.73	817.52	81.75
1946	35,256.37	1,057.69	105.77
1947	26,006.07	780.18	78.02
1948	48,035.47	1,441.06	144.11
		$7,874.34	$787.44

XIII.

That thereupon, on the said 8th day of October, 1949, said State Board of Equalization, by registered mail, notified said defendants of said assessment, but that neither of said defendants paid said tax, penalty, or interest, or any part thereof, nor did they file application with said Board for any change or correction in any manner.

XIV.

That the defendant, King Colony Ranch, an association, and King Colony Ranch, a corporation, for all practical purposes, appear to be one and the same; that the colony, representative of both, is in some respects a religious organization, but it is not organized and operated exclusively for religious, charitable, and or educational purposes, in that it was, during each of said years, en-

gaged in the accumulation of property and wealth in addition to its professed religious, charitable and educational pursuits, and carried on the general business of farming and ranching in competition with all other farmers and ranchers of said Fergus County and in the State of Montana, during each of said years.

CONCLUSIONS OF LAW

WHEREFORE, the Court concludes as a matter of law as follows, to-wit:

1. That the imposition of a corporation license tax against the defendants in this action, under the laws of the State of Montana, does not violate any of the provisions of the Constitution of the United States of America, or of the Constitution of the State of Montana.

2. That neither of the defendants, the King Colony Ranch, as an association, nor the King Colony Ranch, a corporation, was exclusively a religious association or corporation, and they did not operate exclusively for religious, charitable or educational purposes, during any of the years involved herein, to-wit: 1934 to 1948, inclusive; and was not, therefore, exempt from the corporation license tax of the State of Montana for any of said years.

3. That there is due, owing and unpaid to the State of Montana, a corporation license tax from said defendants for each of the calendar years aforesaid, together with ten per centum (10%) penalty thereon, as follows, to-wit:

Year	Tax	Penalty
1935	$ 5.00	$ .50
1936	84.82	8.48
1937	5.00	.50
1938	129.37	12.94
1939	149.53	14.95
1940	230.37	23.04
1941	489.59	48.96
1942	1,096.65	109.66
1943	444.11	44.41
1944	1,143.45	114.35
1945	817.52	81.75
1946	1,057.69	105.77
1947	780.18	78.02
1948	1,441.06	144.11
	$7,874.34	$878.44

4. That there is due, owing and unpaid to the State of Montana, from said defendants, interest upon each year's tax aforesaid, at the rate of one per centum (1%) per month from and after the 15th day of June of the year in which said tax was due and payable, until the same shall be paid.

5. That the State of Montana has a lien upon all property owned or possessed by either of said defendants within the State of Montana, to secure the payment of said corporation license taxes, penalties and interest, as provided by Section 84-1505, R.C.M. 1947, formerly Section 2300, R.C.M. 1935, and execution may issue thereon.

Let judgment be entered accordingly herein.

Done and dated in chambers at Roundup, Musselshell County, Montana, this 10th day of September, 1958, pursuant to stipulation of counsel for the respective parties

/s F. V. WATTS, Presiding Judge.

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FERGUS

THE STATE OF MONTANA,

Plaintiff,

vs.

KING COLONY RANCH, an association, and KING COLONY RANCH, a corporation,

Defendants

JUDGMENT

IN THIS ACTION the defendants, King Colony Ranch, an association, and King Colony Ranch, a corporation, having appeared to the plaintiff's complaint herein, and this Court having rendered, made and filed its Findings of Fact and Conclusions of Law herein, and it having been found by this Court:

I.

That the defendants, King Colony Ranch, an association and King Colony Ranch, a corporation, were not organized and operated exclusively for religious purposes in any of the years 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943 ,1944, 1945, 1946, 1947, and 1948.

II.

That there is now due, owing and unpaid to the State of Montana, from the defendants, King Colony Ranch, an association and King Colony Ranch, a corporation, a

corporation license tax for each of the calendar years aforesaid, together with ten per centum (10%) penalty thereon, as follows, to-wit:

Year	Net Income	Tax	Penalty
1935	$ (Loss)	$ 5.00	$ .50
1936	2,827.32	84.82	8.48
1937	149.27	5.00	.50
1938	4,312.19	129.37	12.94
1939	4,984.26	149.53	14.95
1940	7,679.12	230.37	23.04
1941	16,319.57	489.59	48.96
1942	36,555.12	1,096.65	109.66
1943	14,803.04	444.11	44.41
1944	38,115.14	1,143.45	114.35
1945	27,250.73	817.52	81.75
1946	35,256.37	1,057.69	105.77
1947	26,010.07	780.18	78.03
1948	48,035.47	1,441.06	144.11
		$7,874.34	$787.44

III.

That there is due owing and unpaid to the State of Montana, from said defendants, interest upon each year's tax aforesaid, at the rate of one per centum (1%) per month from and after the 15th day of June in the year in which said tax was due and payable, until the same shall be paid.

IV.

That the State of Montana has a lien upon all property owned or possessed by said defendants within the State of Montana; to secure the payment of said corporation license taxes, penalties and interest as provided by Section 84-1505 R.C.M. 1947, formerly Section 2300 R.C.M. 1935, and execution may issue thereon.

V.

That the imposition of a corporation license tax against the defendants in this action, under the laws of the State of Montana, does not violate any of the provisions of the Constitution of the United States of America, or of the Constitution of the State of Montana.

WHEREFORE, by reason of the law and the premises aforesaid,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the State of Montana, plaintiff, do have and recover of and from the said defendants, King Colony Ranch, an association, and King Colony Ranch, a corporation, the following amounts of tax and penalty for the respective year and each such year, to-wit:

Year	Net Income	Tax	Penalty
1935	$ (Loss)	$ 5.00	$ .50
1936	2,827.32	84.82	8.48
1937	149.27	5.00	.50
1938	4,312.19	129.37	12.94
1939	4,984.26	149.53	14.95
1940	7,679.12	230.37	23.04
1941	16,319.57	489.59	48.96
1942	36,555.12	1,096.65	109.66
1943	14,803.64	444.11	44.41
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1945	27,250.73	817.52	81.75
1946	35,256.37	1,057.69	105.77
1947	26,006.07	780.18	78.02
1948	48,035.47	1,441.06	144.11
		$7,874.34	$787.44

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That the State of Montana, plaintiff, do have and recover of and from the said defendants, King Colony Ranch, an association, and King Colony Ranch, a corporation, interest upon each year's tax as aforesaid, at the rate of one per centum (1%) per month from and after the 15th day of June in the year in which said tax was due and payable until the same shall be paid.

JUDGMENT MADE AND DECREED this 22nd day of September, 1958.

F. V. WATTS,
Presiding Judge

No. 10014

STATE OF MONTANA

In the Supreme Court, March Term, 1960

THE STATE OF MONTANA,

Plaintiff and Respondent.

vs.

KING COLONY RANCH, an association,
and KING COLONY RANCH, a corporation,

Defendant and Appellant.

Ralph J. Anderson, Esq., Helena, Montana
argued orally for Appellant.

George T. Bennett, Esq., Helena, Montana
argued orally for Respondent.

Submitted: February 10, 1960
Decided: March 17, 1960.

Filed: March 17, 1960.

Thomas J. Kearney, Clerk

Mr. Justice Angstman delivered the Opinion of the Court.

This action is to recover corporation license taxes alleged to be due to plaintiff from defendant under Section 84-1501, et seq., for the fourteen years beginning in 1935 to and including 1948, together with penalties and interest.

The complaint consists of fourteen separate causes of action, one for the tax for each of said years.

Prior to January 20, 1947, the King Colony was an unincorporated association. On that date it incorporated

under the laws of Montana and became a corporation with its principal place of business in Fergus County where it owns lands, machinery and livestock and conducts farming operations.

Its Articles of Incorporation recite that it is international Church Society which devotes its entire membership to farming, stock growing, and all other branches of agriculture; that it follows the teachings and tenets of John Huss and of the Hutterische Church Society, living communal lives in colonies made up entirely of non-profit membership, devoted exclusively to agricultural pursuits for the livelihood of its members, dependents and descendants.

The Articles provide that all of its members shall live a communal life as a community brotherhood. No member shall live outside the Colony nor hold any special right in the corporation property. Membership is strictly voluntary. The corporation is governed by a board of directors consisting of five adult male members. The corporation shall not be conducted for profit for any of the members. Its income is used to provide for the needs of its members and for the acquisition of additional property.

The answer denies most of the material allegations of the complaint and contains several separate and affirmative defenses. By these defenses, defendant claims to be exempt from the tax in question because of paragraph "Sixth" of section 84-1501, which provides that: "There

shall not be taxed under this title any income received by any—

"Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual."

Defendant also contends that the purported tax runs counter to the First Amendment to the United States Constitution and section 4 of Article III of the Montana Constitution, and that it conflicts with paragraph 1 of the Fourteenth Amendment to the United States Constitution, all having to do with religious freedom.

The cause was tried to the court sitting without a jury. The court found for plaintiff on all issues and entered judgment accordingly.

Defendant has appealed from the judgment. It is defendant's contention that it is exempt from the tax because it is a religious association or corporation.

It was shown by the evidence, and the court found, that no member of the Colony receives any salary; that they receive no income and own no property and have no estate to transfer to their heirs; that the Colony provides living quarters, food, clothing, medical and hospital care for all members when necessary; the Colony also provides school for the children and cares for its aged without public expense. The court found that while the Colony is

in some respects a religious organization, it is not organized and operated exclusively for religious, charitable or educational purposes, but that during the times in question it engaged in the accumulation of property and wealth and carried on the general business of farming and ranching in competition with all other farmers and ranchers.

Defendant relies strongly on the case of Murdock v. Pennsylvania, 319 U.S. 105, 63 Sup. Ct. 870, 87 L. Ed. 1292, 46 A.L.R. 81, in support of its contention. That was a case involving Jehovah's Witnesses. It struck down a license tax imposed by city ordinance for the privilege of canvassing or soliciting within the municipality. The acts there involved consisted of the sale of religious books and pamphlets. The court pointed out in that case that petitioners "spread their interpretations of the Bible and their religious beliefs largely through the hand distribution of literature by full or part-time workers." The court pointed out that it was a form of missionary evangelism, but indicated that in some cases it will be difficult to determine whether a particular activity is religious or purely commercial. That case was followed in the later case of Follett v. McCormick, 321 U.S. 573, 64 Sup. Ct. 717, 88 L. Ed. 938, 152 A.L.R. 317, which also had to do with Jehovah's Witnesses and to the same effect is State v. Van Daalan, 69 S.D. 166, 11 N.W. 2d 523.

Here, it is quite plain that the activities in carrying on the farming and agricultural pursuits are purely commercial. It is merely the means of acquiring a livelihood

for the members of the Colony and of accumulating money for expansion purposes. The farming operations have nothing to do with the practice of the religious beliefs of the members. It is no different from a similar group or colony engaged in manufacturing and marketing automobiles for a livelihood.

Defendant contends that the tax is one for the privilege of engaging in business in the corporate or quasi corporate form within the rule of Equitable Life Assurance Co. v. Hart, 55 Mont. 76, 173 P. 1062, and Flint v. Stone Tracy Co., 220 U.S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, and that it is only because the religious beliefs of the members cause them to assume the corporate or quasi corporate form. The tax is no upon the privilege of forming a corporation, but upon the privilege of conducting business in that form.

Statutes quite similar to paragraph "Sixth" of section 84-1501, which exempt corporations or associations "organized and operated exclusively for religious * * * purposes, no part of the net income of which inures to the benefit of any private stockholder or individual," have been held not to exempt Hutterische Colonies from the payment of the Federal income tax. Hutterische Bruder Gemeinde, 1 B.T.A. 1-1208, and David Hofer v. U.S., 61 Court of Claims Rep. 672.

A non-discriminatory license tax on these activities does not interfere with religious freedom or the free

exercise of religion. The court did not err in holding that the license tax was and is valid so far as the religious aspect of the case is concerned.

Defendant also contends that it is exempt from this tax because of paragraph "Twelfth" of section 84-1501 which exempts "Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title."

Defendant corporation was not organized for the exclusive purpose of holding title to property within the meaning of that section. It engages in extensive farming operations, raises and sells livestock and does everything that any other corporation owning and operating agricultural land does.

Defendant also claims exemption under paragraph "First" of section 84-1501, which exempts labor, agricultural or horticultural organizations.

This provision was evidently adopted to give effect to that part of section 2 of Article XII of our Constitution which authorizes the Legislature to exempt from property tax "property as may be used exclusively for the agricultural and horticultural societies."

Section 501 of the Internal Revenue Code of 1954 exempts labor, agricultural or horticultural organizations. Our statute uses the same language.

The Federal Tax Regulations (1954) provide that the organizations contemplated by what is now section 501 as entitled to exemption from income taxation, are those which (1) have no net income inuring to the benefit of any member; (2) are educational or instructive in character, and (3) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

In 6 Mertens Law of Federal Income Taxation, §34.19, it is said:

> "*Labor, Agricultural or Horticultural Organizations.* The exemption of labor, agricultural and horticultural organizations is by its terms unconditional but interpretation has considerably qualified and restricted the exemption. While the statute contains no express requirement prohibiting the inurement of the earnings of such organization to the benefit of private shareholders or individuals, the Regulations have provided that requirement and the Regulations have not been challenged in the courts. The principle [sic] qualification for exemption under the Regulations are the following: (1) the organization must have no net income inuring to the benefit of any member, (2) it must be educational or instructive in character, and (3) it must have as its object the betterment of the conditions of those engaged in labor, agricultural or horticultural pursuits, the improvement of products and the development of a higher degree of efficiency in the respective occupations. The fact that Congress

has repeatedly re-enacted the same statutory language with knowledge of the well-established administrative interpretation, lends foundation to an assertion of legislative acquiescence."

The State Board of Equalization was and is warranted in following the Federal interpretation of the language which the Legislature of this state adopted from the Act of Congress.

The contemporaneous construction placed on the statute, by the officers chargeable with the duty of administering it, is entitled to great weight. In re Wilson's Estate, 102 Mont. 178, 56 P. 2d 733; State ex rel. Ebel v. Schye, 130 Mont. 537, 305 P. 2d 350; State ex rel. Erwin v. Warren, 124 Mont. 378, 224 P. 2d 142.

Defendant, as an agricultural organization, is not exempt from the license tax here imposed.

The only other remaining question is whether there is any limitation upon the Board of Equalization as to the number of years over which it may go back to impose a tax.

Defendant contends that when the Board took action on October 8, 1949, it could not levy an assessment for any year prior to 1944. It relies on that part of section 84-1505, which provides: "In cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, the State Board of Equalization shall, upon the discovery thereof at any time within five (5

years after said return is due, make a return upon information obtained as provided for in this act, and the assessment made by the State Board of Equalization shall be paid by such corporation immediately upon notification of the amount of such assessment."

A similar statute has been held by this court to be a limitation upon the Board's authority. State ex rel. Anderson v. State Board of Equalization, 133 Mont. 8, 319 P. 2d 21, and State ex rel. Conn v. Robinson, 133 Mont. 549, 327 P. 2d 390.

But the State contends that Chapter 166, Laws of 1933, which is now section 84-1513, being a later enactment and which authorizes the Board to assess or begin a proceeding in court "at any time," has worked an implied repeal of that part of section 84-1505, which limits the Board to five years. This contention overlooks the fact that section 84-1505 in its present form is a later enactment than section 84-1513. When section 84-1513 was enacted, what is now section 84-1505 limited the Board to a three-year period. Section 84-1505 was amended by Chapter 209, Laws of 1945 to provide for the present five-year limitation. Hence the last law on the subject is Chapter 209, Laws of 1945, which limits the Board to a five-year period.

The judgment so far as it goes back of 1944 is unauthorized and to that extent must be modified. The cause is remanded with directions to eliminate from the judgment all taxes, penalties and interest due for years pre-

ceding 1944 and as thus modified it will stand affirmed. Defendant will recover one-third of its costs on appeal.

ALBERT H. ANGSTMAN,
Associate Justice

We concur:

JAMES T. HARRISON,
Chief Justice

WESLEY CASTLES,
Associate Justice

Mr. Justice Bottomly concurring in part and dissenting in part:

I concur with the majority opinion in that the State Board of Equalization is limited in its authority to assess tax for more than five years. However, I believe it should be pointed out that this case also concerns an assessment of tax for the year 1944. While this is within the five year assessment, in 1944 the limitation to assess tax was only three years. Thus the Board's power to assess a tax for that year expired in 1948 and by extending the power from three to five years, the Board was not given a new grant of power since the extension of power was not specifically made retroactive.

I dissent from the majority opinion holding that this religious corporation is subject to a license tax imposed upon it for the privilege of practicing its religion. The

imposition of such a privilege tax is expressly forbidden to the State by the Feedral Constitution. The First Amendment of the Federal Constitution provides, in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the *free* exercise thereof * * *." (Emphasis supplied). The Fourteenth Amendment of the United States Constitution makes this applicable to the States. These Constitutional provisions prohibit the State of Montana from requiring that this corporation pay a license fee for the privilege accorded its members of living and worshipping according to the dictates of their conscience and their understanding of the Bible. See Murdock v. Pennsylvania, 319 U.S. 105, 63 Sup. Ct. 870, 87 L. Ed. 1292, 46 A.L.R. 81. In addition section 84-1501 (6), R.C.M. 1947, exempts from the corporation license tax a "Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual."

I believe such exemption means exactly what it says. This corporation comes within the exemption and should be exempt because of its provisions. I would reverse the order and judgment of the district court and order the cause dismissed.

R. V. BOTTOMLY,
Associate Justice

Mr. Justice Bottomly:

I concur in the foregoing dissenting opinion by Mr. Justice Bottomly.

HUGH ADAIR,
Associate Justice

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 10014

STATE OF MONTANA,
Plaintiff and Respondent,

vs.

KING COLONY RANCH, an association and KING COLONY RANCH, a corporation,
Defendant and Appellant.

ORDER

Appellant's petition for rehearing herein is hereby denied.

Done this 15th day of April, 1960.

JAMES T. HARRISON,
Chief Justice.

Filed April 18, 1960.

WESLEY CASTLES,

ALBERT H. ANGSTMAN,
Associate Justices.

MONTANA CORPORATION LICENSE TAX

Section 84-1501. Corporation license tax—organizations exempt therefrom. The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided organized and existing under the laws of the State of Montana and engaged in business therein shall annually pay to the State treasurer, as a license fee for carrying on business in said State of Montana, three (3) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the State of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the State of Montana, shall annually pay for the exclusive use and benefit of the State of Montana a license fee for carrying on its business in the State of Montana of three (3%) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the State of Montana, including the interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from joint stock companies or associations whose net income is taxable under this title. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than five dollars ($5.00).

There shall not be taxed under this title any income received by any—

First. Labor, agricultural or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for thepayment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no

part of the net income of which inures to the benefit of any private stockholder or members;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Labor, agricultural or horticultural co-operatives organized and operated on a cooperative basis, (a) for the purpose of marketing the product of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of non-

members in an amount the value of which does not exceed the value of the products market for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done with the United States, State of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis.

Twelfth. Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

Thirteenth. In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function."

In the Supreme Court of the United States

OCTOBER TERM, 1960

No._____

KING COLONY RANCH, an association, and
KING COLONY RANCH, a corporation,

Petitioners,

vs.

THE STATE OF MONTANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FORREST H. ANDERSON,
Attorney General, State of Montana,
Capitol Building, Helena, Montana,
Attorney for Respondent.

WILLIAM F. CROWLEY,
Assistant Attorney General, State of Montana,
Capitol Building, Helena, Montana

GEORGE T. BENNETT,
Special Assistant Attorney General,
Capitol Building, Helena, Montana
Of Counsel

In the Supreme Court of the United States

OCTOBER TERM, 1960

No.

KING COLONY RANCH, an association, and
KING COLONY RANCH, a corporation,

Petitioners,

vs.

THE STATE OF MONTANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

Pursuant to Rule 24 of this Court, Respondents herewith present their brief in opposition to the petition for a writ of certiorari filed with this court on the 20th day of June by the King Colony Ranch, an association and corporation.

ISSUE PRESENTED

The petitioners herein contend that the Corporation License Tax imposed by the State of Montana and contained in Sections 84-1501 et seq., Revised Codes of Mon-

tana, 1947, as imposed upon the petitioners, violates the First Amendment to the Constitution of the United States.

NATURE OF THE TAX

The Montana Corporation License Tax is imposed upon all corporations engaged in business in the State of Montana and is a percentage of the net income of such corporation derived from sources within Montana during the preceding fiscal year. The term "corporation" is defined by the Act to include associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity. The tax is entirely a revenue measure and has no regulatory effect.

The Montana Corporation License Tax Act specifically exempts certain corporations, Section 84-1501, Revised Codes of Montana, 1947. Among the exempt corporations are those organized and operated exclusively for religious purposes, no part of the net income of which inures to the benefit of any private shareholder or individual. Also exempt are corporations organized for the exclusive purpose of holding title to property, collecting the income from such property and turning the same over to an organization which is itself exempt. These exemptions are similar to those granted corporations under the Internal Revenue Code of 1954, by Section 501.

The trial court found that the petitioner was engaged in business in the State of Montana. The business con-

stituted farming and ranching and income was derived from the sale of the farm and ranch products in excess of the needs of the Colony, on the general market and in competition with other farmers and ranchers.

PETITIONERS' AUTHORITIES

Petitioners cite and rely upon the cases of Murdock vs. Pennsylvania, 319 U.S. 805, 87 L. Ed. 1292, 63 Sup. Ct. 8701, 146 A.L.R. 81; Follett vs. McCormick, 301 U.S. 573, 64 S. Ct. 717, 81 L. Ed. 938 and State vs. VanDallam, 69 S.D. 466, 11 N.W. 2d 523. All of these cases involved the Jehovah's Witnesses, and the activities which were claimed to constitute religious practices were the distribution of printed religious material for which contributions were solicited.

In Murdock vs. Pennsylvania, the Court, through Justice Douglas, stated that the distribution of religious literature was "an age-old form of missionary evangelism" and, as such, constituted a religious activity. The Court also found that this activity constituted the dissemination of ideas and as such was protected not only as a religious activity, but under the right of freedom of press and speech.

The Murdock Decision sharply divided the Court and primarily over the question of whether the distribution of religious literature was essentially a religious practice or a commercial activity. In the Follett Case the defend-

ant was an ordained minister of the Jehovah's Witness religious sect and earned his entire livelihood from the sale of religious literature. Again the court divided as to the question of the nature of the activities and whether they constituted primarily religious or commercial pursuits.

The activities upon which the Montana Corporation License Tax Act fall do not raise such questions. There is no element of religious practice or dissemination of ideas involved in the sale of farm and ranch products by a corporation.

As Justice Douglas stated in the Murdock Case on page 110 of the official report:

> "Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital."

Here, the activities of the King Colony and upon which the tax involved falls are "purely commercial." It is also clear from a reading of the Murdock Decision, as well as that of the Follett Case, that activities which are in and of themselves not religious cannot be deemed so by any religious group in order to shield them from taxation by use of the First Amendment. This is made clear by the majority opinion in the Murdock Decision and especially from the statement appearing on page 108 thereof which reads as follows:

> "Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be

made a religious rite and by the zeal of the practitioners swept into the First Amendment."

The sole activity upon which the State of Montana has imposed a tax with respect to the King Colony is the conducting, by that group, of a farming and ranching business in corporate form. The State of Montana, in effect, requires this group to pay a percentage of the net income it derived from its farming and ranching operations to the State of Montana.

PETITIONERS CANNOT RAISE ANY QUESTION OF RELIGIOUS LIBERTIES

There are no natural persons a party to this cause. This matter constitutes a suit by the State of Montana against a corporation. The guarantees of the First Amendment of the right to free expression of religious beliefs and practices is the right of natural persons.

Petitioners have been unable to cite any decision directly holding that a corporation or association may raise the question of the infringement of religious liberties. We believe there is a sound reason why such assertion by a corporation should be denied. It is difficult to conceive of natural persons worshipping God and exercising their religious beliefs and practices by and through a corporation. If, in fact, the imposition of a tax by the State of Montana upon the business income of a corporation organized primarily for the conducting of the business of

farming and ranching does infringe upon the free expression of the religious beliefs of the members of this colony who work for and derive their sustenance from such corporation, then these individuals had a right to intervene in the District Court and to assert such rights. We, therefore, believe that the questions attempted to be raised here with regard to the First Amendment by this corporation should be denied.

Hague vs. C.I.O., 307 U.S. 496, 595 Sup. Ct. 954, 83 L. Ed. 1423;

Northwestern National Life Insurance Co. vs. Riggs, 203 U.S. 243;

Western Turf Association vs. Greenberg 204 U.S. 359;

International Ladies Garment Workers Union vs. Seamprufe, Inc., 121 Fed. Supp. 165.

Respectfully submitted,

FORREST H. ANDERSON,

Attorney for Respondent,

WILLIAM F. CROWLEY,

GEORGE T. BENNETT,

Of Counsel

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [illegible]

KING COLONY RANCH, an association, and
KING COLONY RANCH, a corporation,
Petitioners,

vs.

THE STATE OF MONTANA,
Respondent.

REPLY BRIEF OF THE PETITIONERS TO THE BRIEF IN OPPOSITION TO THE WRIT OF CERTIORARI.

RALPH J. ANDERSON,
517 Power Block, P. O. Box 252
Helena, Montana,
Attorney for Petitioner.

STANLEY P. SORENSON,
517 Power Block, P. O. Box 252
Helena, Montana

HOWARD C. GEE,
Montana Building,
Lewistown, Montana
Of Counsel.

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REPLY BRIEF OF THE PETITIONERS TO THE BRIEF IN OPPOSITION TO THE WRIT OF CERTIORARI.

To the Honorable Chief Justice and to the Associate Justices of the Supreme Court of the United States:

Pursuant to the rules of this Honorable Court the petitioners herein desire to present a brief consideration of the respondent's brief in opposition to the petition for writ of certiorari. No new arguments or authorities will be presented. This brief is solely for the purpose of considering the arguments and authorities of respondent.

PETITIONERS' AUTHORITIES

The respondent, under the above heading, argues that the activities of the King Colony on which the tax herein involved falls are "purely commercial." As to the arguments presented by the respondent under this heading we would point out that respondent has entirely misconceived and misunderstood the position of the petitioner. We concede that there is no element of religious practice involved in the sale of farm and ranch products but the tax here imposed is not simply a tax upon the sale of farm and ranch products. It is a license tax imposed for the privilege of conducting that business or any other business in the corporate or association form. The assumption of the corporate or association form by the petitioner is a direct rect result and therefore a part of the religious practice and beliefs of petitioners' members, consequently the imposition of this tax upon the petitioners is an imposition resulting from their religious practices and beliefs. This tax is not imposed upon private individuals engaged in agricultural pursuits nor is it imposed upon partnerships engaged in agricultural pursuits. Both of these avenues of conducting business activities are closed to the members of the petitioner by reason of their religious beliefs and the requirements that the petitioner pay a license fee for the privilege of conducting thmselves in the only manner supplied by the law which is consistent with their religious beliefs results in an imposition of a tax upon an activity which is protected by the First Amendment.

PETITIONERS CAN RAISE THE QUESTION OF RELIGIOUS LIBERTY.

Respondents principal argument in opposition to the petition for Certiorari is presented in support of the proposition that the petitioners, being a corporation and association, cannot raise the question here presented. In support of their position they cite four cases: Hague vs. C.I.O., 307 U.S. 496, 595 Sup. Ct. 954, 83 L. Ed. 1423, Northwest National Life Insurance Co. vs. Riggs, 203 U.S. 243 51 L. Ed. 168, Western Turf Association vs. Greenberg, 204 U.S. 359, 51 L. Ed. 520, International Ladies Garment Workers vs. Seamprufe, Inc., 121 Fed. Supp. 165.

In our petition for certiorari we demonstrated that this Court, while it has held that a corporation is not a citizen within the meaning of the privileges and immunities clause of the Fourteenth Amendment, has likewise held that a corporation is a person within the meaning of the Equal Protection and Due Process of Law clauses, see Grosjean vs. American Press Co., 297 U.S. 233, 56 Sup. Ct. 444, 80 L. Ed. 660, and has treated the religious freedom guaranteed by the First Amendment as coming within the Due Process clause of the Fourteenth Amendment.

See: Minersville School District vs. Gobitis, 310 U.S. 586, 60 Sup. Ct. 1010, 84 L. Ed. 1375. See also the annotation appearing in 96 L. Ed. at page 968 wherein the annotator, at page 969, makes the following statement:

" 'The freedom of religion which is protected against federal legislation by the First Amendment of the Federal Constitution is also protected against invasion by state action, by reason of the language of the Fourteenth Amendment, declaring that no state shall deprive any person of liberty without due process of law.' Citing 'Schneider v. Irvington (1929) 308 U.S. 1947, 84 L. Ed. 155, 60 S. Ct. 146; Cantwell v. Connecticut (1940) 310 U.S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 ALR 1352; Re Summers (1945) 325 U.S. 561, 89 L. Ed. 1795, 65 S. Ct. 1307, reh den 326 U.S. 807, 90 L. Ed. 491, 66 S. Ct. 94; Everson v. Board of Education (1947 (330 U.S. 1, 91 L. Ed. 711, 67 S. Ct. 504, 168 A.L.R. 1392, Reh Den 330 U.S. 855, 91 L. Ed. 1297, 67 S. Ct. 962; Illinois ex rel. McCollum v. Board of Education (1948) 333 U.S. 203, 92 L. Ed. 649, 68 S. Ct. 461, 2 ALR 2d 1338'."

Considering the cases cited by the respondent we find that none of them involved the particular issue here raised. Hague vs. C.I.O., supra, 307 U.S. 496, involved the right of the people peaceably to assemble which was considered by this Court to be within the Privileges and Immunities Clause of the Fourteenth Amendment. The Court at page 514 of 307 U.S. said:

"Natural persons, and they alone, are entitled to the privileges and immunities which §1 of the Fourteenth Amendment secured for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit."

Northwestern National Life Ins. Co. vs. Riggs, supra, 203 U.S. 243, does not specifically delineate the particular privilege, liberty, freedom or right involved, but certainly it was not freedom of religion with which we are here concerned. Furthermore, that case appears to the authors of this brief to be in conflict with Grosjean vs. American Press Co., supra, 297 U.S. 233.

Western Turf Ass'n. vs. Greenburg, supra, 204 U.S. 359, also dealt with a matter held by this Court to be within the Privileges and Immunities Clause of the Fourteenth Amendment. Insofar as that case speaks of the Due Process Clause, it, likewise, seems to be in conflict with the Grosjean case. International Ladies Garment Workers Union vs. Seampruf Inc., supra, 121 Fed. Supp. 165, is likewise concerned with a matter other than freedom of religion and does not appear to be in point.

We recognize that there has been no cause decided by this Honorable Court which specifically answers this question but, contrary to respondent's assertion, we did cite in our petition a case from a Federal Court which involved a direct holding that a corporation could raise this question. We refer to Kotohira Jinshaw v. McGrath, 90 Fed. Supp. 892.

We respectfully submit that the brief in opposition filed herein presents no valid argument upon which this petition could be denied and we again respectfully submit

that this petition is one which merits a full hearing by this Court.

Respectfully submitted,

RALPH J. ANDERSON,
Attorney for Petitioner.

STANLEY P. SORENSON,
HOWARD C. GEE,
Of Counsel.